

Regarding: Prerecorded Message EBR Telemarketing, Project No. R411001

I am writing as a consumer to state my opposition to the proposed allowance of pre-recorded telemarketing messages from companies with whom consumers have existing business relationships, as well as to the proposed increase in duration for measuring the "3% abandonment" limit from one day to thirty days pursuant to TSR Section 310.4(b)(4)(i).

I don't want telemarketing calls, period, even from entities with established business relationships. Calls concerning past or pending orders (safety recalls, shipping confirmations, reservations, appointments, etc.) are fine, but this is in reference to telemarketing, defined in 310.2(cc) as being conducted to induce purchases of goods or services or a charitable contribution. In addition to not wanting telemarketing calls at all, and in response to the FTC's call for comments, I especially don't want them in the form of pre-recorded messages.

(1) The Commission's seems to mirror VMBC's petition in its assessment that the "harms that the call abandonment provisions were intended to remedy seem unlikely to arise from telemarketing campaigns that VMBC describes."

I agree with one aspect of VMBC's petition: the use of recorded telemarketing messages should significantly reduce the problem of call abandonment, both in theory and in practice.

However, call abandonment from entities with Established Business Relationships isn't the problem with recorded telemarketing messages; the problem is that the lower cost of telemarketing will indirectly increase unwanted telemarketing calls to consumers, including those already listed on the Do Not Call registry.

The VMBC asserts that because this modification to the TSR applies only to Established Business Relationships, "the strong incentive to protect the goodwill of customers" will serve as a check on the potential for abuse. The VMBC cites the Commission's more tentative conjecture in its Report to Congress Pursuant to the Do Not Call Implementation Act, when the Commission suggested that "the incentive to nurture established business relationships may provide an adequate restraint on the growth of recorded message telemarketing." (Note the language: \*may provide\*).

Certainly one can envision companies with longstanding business relationships not wanting to jeopardize those relationships with annoying telemarketing calls, but in the post-"Do Not Call registry" era, the emerging reality is different from this optimistic view. Companies are offering free or below-cost inducements to establish business relationships for the primary purpose of acquiring the ability to telemarket to consumers in the Do Not Call registry. Because the ability to use pre-recorded messages will lower the cost per call for entities with Established Business Relationships (EBRs), this change is sure to increase the practice of establishing business relationships for primarily telemarketing purposes. With 58 million phone numbers in the Commission's Do Not Call registry, and growing, the incentive to circumvent this list through the use of EBRs is also growing. There is no strong incentive to protect the goodwill of customers; the inducement to establish the business relationship is merely a cost of telemarketing audience acquisition, and the telemarketing entity's only incentive is to maintain the ability to telemarket to the individuals.

One could object that the consumer is willingly subjecting themselves to telemarketing in exchange for goods or services, except that consumers are frequently unaware of this bargain, since the use of their telephone number for telemarketing is rarely disclosed in an obvious manner, and few consumers are familiar with the minutia of the Telemarketing Sales Rule.

The FTC should maintain the current TSR measures to protect consumers from further largely unwanted telemarketing calls.

(2) The proposition that entity-specific Do Not Call requests can be asserted as

efficiently and effectively with pre-recorded messages as with live calls sounds doubtful. If nothing else, none of the proposed options allow a person answering on a non-touch-tone phone to efficiently make a Do Not Call request. Even on a touch tone phone, if a telemarketer sends legitimate caller ID information, I frequently answer the phone with "Please add me to your do not call list" rather than saying "Hello." Without legitimate caller ID information, if I encounter the tell-tale one second silence after I answer "Hello," I will also immediately request "please add me to your do not call list," since the silence almost always indicates either a live telemarketer or a call-abandoning telemarketer. The Commission's proposed methods require consumers to listen to the identify of the company and then instructions for requesting Do Not Call inclusion, which will take at least several seconds longer than in the examples cited. The Commission has proposed two possible methods, neither of which sounds wholly satisfactory:

(a) After identification, the message must say to push a button to be added to a do not call list. This sounds like a good option for live calls, certainly better than option (b), but it's still going to take longer than with a typical live call, where the speaker can be interrupted immediately upon recognition that it is a telemarketer. It will also be completely ineffective when messages are left on answering machines. Live telemarketers are better at discerning answering machines from live answerers, and so are less likely to leave messages in the first place.

(b) After identification, a message could be delivered saying to push a button to talk to a live representative. This will inevitably add further delay to the process, and creates a risk of the call abandonment problem that the TSR was already trying to avoid - what if there are no live representatives available at that time? Even in the best of circumstances, this process would take longer for a consumer to assert their Do Not Call request than with a live call.

(3) Since "the Commission also seeks information about alternative approaches that the Commission might use in this area," (RIN 3084-0098) I suggest the following additional approaches:

(a) Standardize on the button to be pushed to assert the desire to be added to entity-specific Do Not Call lists, so that consumers aware of the standard can assert this right without having to listen to the callers full identification and Do Not Call instructions. For example, if all telemarketers using pre-recorded messages accept "7" as the "do not call" request, then telemarketing-averse consumers can push that button as soon as they detect that the message is pre-recorded and from someone they don't want to hear from.

(b) Require legitimate caller ID information to be sent when it is technically feasible, to allow consumers advance notice that the call may be a telemarketer. While I receive far fewer telemarketing calls since joining the Do Not Call registry, the recent campaign season brought several pre-recorded calls a day, and many of these not only shielded caller ID information (i.e. "PRIVATE CALL"), but some falsified caller ID information such as "1-111-111-1111" or "1-234-567-8910" for the originating phone number. Legitimate caller ID would provide advance notice, which when combined with approach (3)(a) above, would facilitate more rapidly asserting a Do Not Call preference. Whether the call is originating from the business with an EBR, or from a telemarketing firm calling on behalf of a business with an EBR, the calling entity should be required to identify themselves.

(c) When caller ID information is sent from a telemarketer, it would be even better to require telemarketers to further identify their name with a standardized preface, such as "TM: " before their name.

(d) Standardize on a very brief multi-frequency tone or sequence of tones at the beginning of all pre-recorded telemarketing messages, so that live answerers might immediately recognize it as a prerecorded telemarketing call, which again combined with approach (3)(a) above would expedite assertion of a Do Not Call preference. Further, answering machines could be made to identify and optionally filter such messages from being recorded, and telephones, answering machines, or other

specialized devices could be designed to automatically and immediately detect and assert a Do Not Call request (using approach (3)(a)), whether the answerer was a live person or answering machine, saving the live answerer the effort of even pushing a button.

(4) Regarding the increase of the 3% abandonment limit from "per day, per campaign" to thirty days, in keeping with the FCC's rules, I concur with the Commissions tentative assessment that the DMA has provided insufficient justification for this change. If a 3% limit can be adjusted over 30 days, it can be dynamically adjusted over one day; it's simply a matter of modifying the software systems to implement this. If marketers "who use predictive dialing technology are having difficulty configuring their software to comply with the FTC's per day, per calling campaign 3% standard," as the DMA states, then that's their problem. It's not like it's a computationally difficult problem to solve, it's just modifying your software. When the 3% limit is approaching or exceeded, just dial less frequently relative to the available telemarketers until the rate is back to normal. In the worst case, predictive dialing can cease dial at all until a marketer is free, giving a 0% abandonment rate; dynamically adjusting from this level will gradually increase the abandonment rate. The DMA seems to suggest marketers want to hit 3% almost as exactly as possible, to maximize marketer efficiency, while the consumer's interest (and I think the FTC's intent) is better served by DMA members targetting a much lower rate, but allowing up to 3% as an unusual upper range. If DMA members are vexed by hitting 3% exactly but accidentally hitting 3.2% some days, then target 2% and your problem will be solved.

While on the 3% topic, the 3% limit itself seems excessive to me; as a consumer, I find it unfathomable that call abandonment is legally allowable at all, let alone at such a high rate. Since telemarketers frequently mask their caller ID information, it's impossible even with caller ID to distinguish between what might have been an abandoned telemarketing call, and what might be a stalker, burglar, or other criminal determining a person's typical schedule of being at home. Prior to the Do Not Call registry, I frequently received multiple abandoned calls per evening, probably from telemarketers (though I'll never know), and it's \*EXTREMELY CREEPY\*. Ideally, I believe telemarketers should be required to identify their failed calls with a pre-recorded message identifying the caller and stating an FTC-specified message of contrition, e.g. "This was a failed telemarketing call from XYZ Corp. We're scum and we're sorry for harassing you. <click>."